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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,271	11/30/2000	Cary Lee Bates	AUS920000291US1	5237

7590 09/26/2003
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EXAMINER

POND, ROBERT M

ART UNIT PAPER NUMBER

3625

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/726,271

Applicant(s)

BATES ET AL.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-4, 6-16, and 18-28 are rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al. (patent number 6,530,084) in view of Lett (patent number 5,539,822).**

Del Sesto et al. teach a method and apparatus to facilitate control of interactive applications executing in defined time periods. Del Sesto et al. teach broadcasters as sources of television programs, commercials, and interactive applications, a broadcast server that maintains a database of various interactive applications, wherein the various interactive applications are associated with individual broadcasters, television programs, and commercials. Del Sesto et al.

teach each interactive application containing at least one definition of a time period concerning the offering, start, or execution of an interactive application (see at least abstract; col. 1, line 8 through col. 3, line 22). Del Sesto et al. teach viewers ordering product (e.g. travel brochure), supporting pay-per-view services, and a time period where application execution starts and ends during a program broadcast (see at least col. 3, lines 65-67).

Del Sesto et al. teach all the above as noted under the 103(a) rejection and further teach a broadcast receiver detecting interactive applications, broadcast programs as segments, and pay-per-view services, but do not disclose specifics on purchasing selection. Lett teaches a system and method of providing interactive services in a subscription television system featuring a controller memory for storing subscriber terminal identification data, transaction identification data and transaction return data (please see at least abstract; col. 3, line 18 through col. 4, line 37). Lett discloses the use of television set top terminals with limited tuner and descrambling capabilities becoming a home communications terminal including user friendly processor controlled on screen displays for offering such services as advance video cassette recorder programming, sleep timing, parental control, pay-per-view, favorite channels and some limited messaging capabilities (see at least col. 2, lines 7-14). Lett further teach purchasing products via the interactive television service, delivery of products (e.g. video game download) and being billed by the system (see at least col. 5, lines 64-67). Therefore it would have been obvious to one of ordinary skill

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in the art at time of the invention to modify the system and method of Del Sesto et al. to include purchasing specifics as taught by Lett, in order to more fully disclose to potential customers how product is purchased and delivered via interactive television services, and thereby attract more customers to the service.

Del Sesto et al. teach all the above as noted under the 103(a) rejection but do not specifically disclose products being software products. Lett teaches all the above as noted under the 103(a) rejection and further video game software as a type of product downloaded via an interactive service (see at least col. 20, lines 34-37). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include software products as taught by Lett, in order to facilitate software purchases via the interactive service, and thereby attract software providers and software consumers to the interactive service.

Del Sesto et al. teach all the above as noted under the 103(a) rejection but do not disclose storing the downloaded program in persistent storage. Lett teaches all the above as noted under the 103(a) rejection and further teach downloading a video program into the subscriber's terminal DRAM memory or non-volatile memory (NVM), and further teach optionally controlling the amount of time the video program remains in the subscriber's terminal memory. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include time controlled

storage of software downloads as taught by Lett, in order to support pay-per-view product purchases.

Del Sesto et al. all the above as noted under the 103(a) rejection and teach solving time related problems associated with interactive applications associated with television broadcasts, commercials as broadcast segments, and further teach a predefined time period in which the interactive application begins and ends during a program broadcast period, but do not specifically disclose software product download during a program broadcast. Lett teaches all the above as noted under the 103(a) rejection and further teach video game program download as an interactive service. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. to include downloading a software program product as taught by Lett during the time period allotted during a program broadcast as taught by Del Sesto, in order to relax time constraints during an interactive application, and thereby increase sales opportunities of the interactive service by exposing the viewer to the product as soon as the interactive application is executed.

- 3. Claims 5 and 17 are rejected under 35 USC 103(a) as being unpatentable over Del Sesto et al. (patent number 6,530,084) and Lett (patent number 5,539,822), as applied to Claims 4 and 16 further in view of Official Notice**

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(regarding old and well-known business practices of broadcasters and cable network providers).

Del Sesto et al. and Lett teach all the above as noted under the 103(a) rejection and teach broadcasters or cable networks providing pay-per-view services offered by pay-per-view providers, charging and billing the viewer for selected services, but do not disclose charging the viewer for delivering the service. This examiner takes the position that it is old and well-known that broadcasters and cable network operators charge for delivering access to viewers and charge for additional services beyond basic subscriber services. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Del Sesto et al. and Lett, to include charges for service delivery as taught by Official Notice, in order to fully maximize revenue from the interactive application service.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 5,818,440 (Allibhoy et al.) 06 October 1998; teach interactive applications synchronized with television commercials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ms. Wynn Coggins** can be reached on 703-308-1344.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

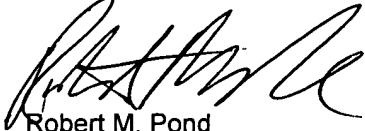
or faxed to:

703-872-9306 (Official communications; including After Final communications labeled "Box AF")

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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal

Drive, Arlington, VA, 7th floor receptionist.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', written over the printed name.

Robert M. Pond
Patent Examiner
September 22, 2003